

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 97-262
	)	
Price Cap Performance Review	)	CC Docket No. 94-1
for Local Exchange Carriers	)	

DECLARATION OF JOEL E. LUBIN

Joel E. Lubin declares as follows:

1. I am Regulatory Vice President-Law and Public Policy of AT&T Corp. ("AT&T"). My responsibilities in this capacity include the evaluation of regulatory policy issues affecting AT&T's interstate telecommunications operations, including access, universal service and local competition matters. I have been employed in various capacities with AT&T and its affiliates for 28 years, including 2 years as a Member of Technical Staff with Bell Telephone Laboratories. I hold a Master of Science degree in Operations Research from Columbia University and a Master of Business Administration degree from Fordham University.

2. I make this declaration in opposition to the Joint Petition by Pacific Bell, Nevada Bell and Southwestern Bell Telephone Company (collectively, the "Petitioners") requesting a partial stay of the Commission's recent orders in the above-captioned proceedings on the ground, in part, that certain portions

of those orders will inflict "irreparable injury" on those entities. The Petitioners also assert that entry of an accounting order will adequately protect the interests of interexchange carriers ("IXCs") and long distance consumers pending appellate review of the Commission's orders.

#### CLAIM OF IRREPARABLE INJURY

3. The Joint Petition asserts (p. 22) that the Commission's LEC Price Cap Order<sup>1</sup> and the Access Reform Order<sup>2</sup> will reduce the annual interstate revenues of Southwestern Bell Telephone Company ("SWBT") by about \$85 million, and the revenues of Pacific Bell by a similar amount. It also states (p. 23 n. 43) that the interstate access revenues of all local exchange carriers ("LECs") "could be reduced in the aggregate by \$1.7 billion" as a result of these decisions.

4. Attached as Schedule 1 of this declaration is a chart including data on annual revenues, expenses, investment and earnings levels for the calendar year 1996 for LEC interstate services, as reported by LECs subject to price cap regulation in those carriers' Form 492

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<sup>1</sup> Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1, Fourth Report and Order, FCC 97-159 (released May 21, 1997) ("LEC Price Cap Order").

<sup>2</sup> Access Charge Reform, CC Docket No. 96-262, First Report and Order, FCC 97-158, released May 16, 1997 ("Access Reform Order").

reports to the Commission. As shown there, price cap LECs in the aggregate achieved an annual rate of return of 14.84 percent, on annual revenues of almost \$23.4 billion for that year. As also shown there, the seven Regional Bell Operating Companies ("RBOCs") as a group had annual earnings of 14.41 percent for their interstate services, on total annual revenues of almost \$18.7 billion during this same period.

5. Further, Schedule 1 shows that for this period, the Form 492 reports of Petitioners Pacific Bell, Nevada Bell and SWBT reflect that, on a combined basis, those carriers achieved an annual rate of return of 14.27 percent in 1996.<sup>3</sup>

6. Attached as Schedule 2 of this declaration is a chart that restates the foregoing data for all price cap LECs as a group, and for the RBOCs as a group, to reflect the reduction in their interstate access revenues

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<sup>3</sup> Evaluation of the impact of the Commission's decision on the Petitioners on a combined basis is fully justified (and is, indeed, the only economically appropriate basis) because the petitioners are in the process of finalizing their adoption of a merger agreement, pursuant to which Pacific Telesis Group, the corporate parent of Pacific Bell and Nevada Bell, will be acquired by SWBT's corporate parent through an exchange of equity securities. Upon completion of that transaction, all three petitioners will be owned by the public shareholders of the surviving entity, SBC Communications, Inc.

described in the Joint Petition.<sup>4</sup> Schedule 2 also adjusts the revenues reported by the RBOCs as a group to reflect AT&T's estimate of the portion of that revenue reduction that would be incurred by those carriers. As shown in that schedule, even after the revenue reductions the price caps LECs' consolidated rate of return would be 12.11 percent, while the restated rate of return of the RBOCs as a group would be 11.75 percent.<sup>5</sup> These rate of return levels are still well above the 11.25 percent rate of return prescribed by the Commission for these LEC interstate services.

7. Moreover, the reductions in the Petitioners' aggregate revenues and earnings will not result in a rate of return below the level prescribed by the Commission. Schedule 2 also presents the consolidated annual revenues, expenses, average net

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<sup>4</sup> Although the petition implies that the price cap LECs will incur a revenue reduction of \$1.7 billion as the result of the Commission's orders, that amount represents the projected reduction in access charges payable by IXCs. Because the Commission elsewhere required increases in the subscriber line charges ("SLCs") payable by end users, the actual reduction in the LECs' access revenues is projected at about \$1.5 billion. AT&T has used the latter figure in its calculations in Schedule 2.

<sup>5</sup> These computations assume, moreover, that the price cap LEC and RBOC PCIs are in all cases equal to their actual price indices ("APIs"), even though many of those carriers have "headroom" between their PCIs and APIs that would mitigate the impact of their rates of any reductions in their price caps.

investment and earnings for the Petitioners, derived from those carriers' Form 492 reports. As shown there, while the petitioners had an aggregate 1996 rate of return of 14.27 percent, a reduction of \$159 million in their total annual revenues such as that described in the Petition would reduce their consolidated annual rate of return to 11.85 percent.<sup>6</sup> In short, the financial loss claimed by the Petitioners would not even come close to threatening their businesses.<sup>7</sup>

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<sup>6</sup> Significantly, although the Jones Declaration attached to the Joint Petition asserts (p. 4) that the impact of the Commission's orders on Pacific Bell will be similar to that on SWBT, it does not describe the basis of that estimate. Moreover, the Bauman Declaration supplied by Pacific Bell provides no estimate of any revenue loss for that carrier. For purposes of its calculation of the earnings effect of the Commission's decision, AT&T in Schedule 3 has estimated revenue reductions for Pacific Bell and Nevada Bell analogous to SWBT's claimed revenue loss; the assumed revenue impact for the combined Petitioners is almost \$159 million. Moreover, the Joint Petition does not appear to take account of the tax effect of a reduction in the Petitioners' revenues; AT&T's calculations reflect those tax effects.

<sup>7</sup> The claimed reduction in Petitioners' revenues also does not appear to take account of the fact that, because of the price elasticity of demand for interstate access service, reductions in their interstate access rates can be expected to stimulate additional demand and thereby further reduce the loss of revenues claimed in the Joint Petition.

EFFECT ON CONSUMERS AND AT&T

8. The Joint Petition also contends that staying the Commission's decisions would have no adverse impacts on IXCs or the public if the Commission also imposes an accounting order on the collection by Petitioners and other price cap LECs of revenues in excess of the amount permitted under the LEC Price Cap Order and Access Reform Order. This claim is demonstrably incorrect.

9. AT&T has already publicly committed to flow through to its customers, in the form of reductions in interstate calling rates, projected reductions in its interstate access costs that result from implementation of the Commission's orders in these proceedings.<sup>8</sup> Specifically, AT&T has committed to reduce the basic schedule day and evening rates by 5 percent, and to reduce basic schedule rates in the night/weekend period by 15 percent, assuming that IXC access payments are reduced by \$1.7 billion in the aggregate. Published reports indicate that other IXCs also plan to reduce calling rates to their customers once the Commission-ordered access reductions become effective.

10. Because the reductions in AT&T's calling rates described above are expressly predicated upon the

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<sup>8</sup> Letter, dated May 3, 1997, from G. M. Lowrie, Senior Vice President, AT&T, to Reed Hundt, Chairman, FCC.

access cost savings resulting from the Commission's orders, it will not be possible for AT&T now to implement that plan if those decisions are stayed. Moreover, even if AT&T were to receive a refund of amounts subject to an accounting order at some later date, consumers will be forced to forego immediate rate reductions and will be deprived permanently of the substantial time-value of those rate reductions which AT&T has planned to implement.

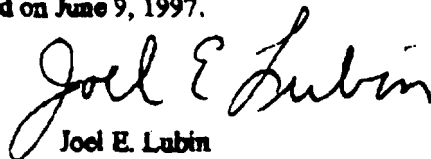
11. A stay would also inflict substantial hardship on AT&T in several ways. First, because AT&T would be unable in the absence of the access cost reductions to implement its own long distance rate reductions, AT&T's ability to retain and attract customers will be adversely affected. Second, because long distance service demand is relatively price elastic, a stay will deprive AT&T of the stimulation in demand -- and, hence, revenues -- that can otherwise be expected to occur if AT&T were now to be able to flow through its access cost savings in the form of lower long distance calling charges.

12 Third, because additional demand would allow AT&T to more efficiently serve all traffic carried over its network, because of economies of scale, a stay will deprive AT&T of the added economic efficiency that an immediate access flow through would produce. Fourth, even if AT&T were later to receive access refunds

pursuant to an accounting order, just as with consumers that delay will permanently deny AT&T the substantial economic advantages that would accrue to it from an immediate implementation of the access charge reductions and flow through.



I declare under penalty of perjury under the  
laws of the United States of America that the foregoing  
is true and correct. Executed on June 9, 1997.

  
Joel E. Lubin

**SCHEDULE 1**

**1996 FORM 492 INTERSTATE RESULTS**  
**(Dollars in thousands)**

	REVENUE	EXPENSES/ TAXES	NET RETURN	AVERAGE NET INVESTMENT	RATE OF RETURN (PERCENT)	EARNINGS AT 11.25% RETURN*	EXCESS**
PRICE CAP LECS	\$23,366,177	\$18,476,610	\$4,889,567	\$32,953,586	14.84%	\$3,707,278	\$1,182,289
RBOCS	18,682,235	14,908,207	3,774,028	26,185,590	14.41%	2,945,879	828.149
COMBINED PETITIONERS	3,995,952	3,142,271	853,681	5,980,944	14.27%	672,856	180,825

\* This amount represents the aggregate earnings which the carriers would have achieved at an 11.25 percent rate of return prescribed by the Commission for the LECs' interstate services.

\*\* This amount represents the difference between the actual earnings reported by the carriers and the amount of earnings that would have been achieved at an 11.25 percent rate of return, multiplied by a factor of 1.66667 to account for tax effects (at an assumed composite rate of 40 percent).

**SCHEDULE 2**

**PRICE CAP COMPANIES-1996 FORM 492 INTERSTATE ADJUSTED RESULTS**

	REVENUE	ANNUAL 1997 FILING IMPACT	EXPENSES AND TAXES	1997 ANNUAL FILING TAX ADJUSTMENT	NET RETURN	AVERAGE NET INVESTMENT	RATE OF RETURN
PRICE CAP LECS	\$23,366,177	(\$1,496,314)	\$18,476,610	(\$598,526)	\$3,991,779	\$32,953,586	12.11%
RBOCS	\$18,682,235	(\$1,163,885)	\$14,908,207	(\$465,554)	\$3,075,697	\$26,185,590	11.75%
COMBINED PETITIONERS	3,995,952	(\$242,030)	\$3.12.281	(96,812)	\$708,463	\$5,980,944	11.85%

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BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

In the Matter of Southwestern Bell	§	
Telephone Company - Kansas' Compliance	§	Docket No. 92 SWBT-411-GIT
with Section 271 of the Federal	§	
Telecommunications Act of 1996	§	

**STATEMENT OF STEVEN E. TURNER  
ON BEHALF OF  
AT&T COMMUNICATIONS OF THE SOUTHWEST**

**I. INTRODUCTION AND QUALIFICATIONS**

1. My name is Steven E. Turner. Currently, I head my own telecommunications and financial consulting firm, Kaleo Consulting.

2. I hold a Bachelor of Science degree in Electrical Engineering from Auburn University in Auburn, Alabama. I also hold a Masters of Business Administration in Finance from Georgia State University in Atlanta, Georgia.

3. From 1986 through 1987, I was employed by General Electric in their Advanced Technologies Department as a Research Engineer developing high speed graphics simulators. I joined AT&T in 1987 and, during my career there, held a variety of engineering, operations, and management positions. These positions covered the switching, transport, and signaling disciplines within AT&T. From 1995 until 1997, I worked in the Local Infrastructure and Access Management organization within AT&T. It was during this tenure that I became familiar with the many regulatory issues surrounding AT&T's local market entry, and specifically with issues regarding the unbundling of Incumbent Local Exchange Company (ILEC) networks.

4. I formed Kaleo Consulting in January 1997. I consult primarily on regulatory issues related to facilities-based entry into local exchange service and, using financial models, advise companies on how and where to enter telecommunications markets.

## **II. PURPOSE AND SUMMARY OF STATEMENT**

5. As discussed in the Statement of Edwin Rutan (Rutan, ¶¶ 8, 11-15), because SWBT's Section 271 application must proceed under "Track A" (Section 271(c)(1)(A)) of the Telecommunications Act of 1996 ("FTA"), SWBT must satisfy two requirements. First, SWBT must actually be providing access and interconnection to one or more competing, predominantly facilities-based providers pursuant to approved interconnection agreements. Second, those services must be provided in a manner that fully implements the competitive checklist of Section 271(c)(2)(B). (Rutan, ¶ 16).<sup>1</sup>

6. As to the first requirement, this Statement will demonstrate: (1) that facilities-based competition does not now exist in Kansas; (2) why resale agreements do not provide facilities-based competition and, indeed, offer only very limited forms of competition; (3) the consequent importance of facilities-based competition as a "check" on the anticompetitive tendencies of local exchange service monopolies and the crucial importance of unbundled network elements (UNEs) to the development of such facilities-based competition; and (4) how SWBT's pricing of UNEs threatens to be a major barrier to the development of facilities-based competition in Kansas. As to the second requirement, this Statement will demonstrate that even for the unbundled access and interconnection agreements that have been negotiated and/or arbitrated in Kansas, SWBT has not implemented the competitive checklist.

7. Finally, and as is also addressed in the Statement of Edwin Rutan, Track B is not available to SWBT where, as here, a carrier has requested access and interconnection

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<sup>1</sup> As explained in the testimony of Frederick Warren-Boulton and Joseph Gillan, SWBT's entry into interLATA service also could not comport with the public interest absent effective facilities-based local competition.

from SWBT on a timely basis. (Rutan, ¶¶ 9-15). Accordingly, it is my understanding that SWBT may not rely upon its Statement of Generally Available Terms and Conditions (SGAT) in order to satisfy the checklist requirements of Section 271(c)(2)(B). Nonetheless, to ensure a complete record, this Statement will also explain at appropriate points why SWBT's SGAT will not enable facilities-based competition to develop in any meaningful way.

### III. NO FACILITIES-BASED COMPETITION EXISTS IN KANSAS

8. There is, to my knowledge, no facilities-based competition anywhere in Kansas, much less competition across substantial portions of the state for both residential and business customers, as the FTA requires. The entire State of Kansas does not yet have a single local exchange customer being served by competitive facilities, or even by an unbundled ILEC loop. Thus, for this reason alone, SWBT does not meet the requirements of Track A of the FTA.

9. SWBT, in the Affidavit of Sandra L. Wagner, attempts to gloss over this critical fact by claiming that there are nine companies that have interconnection agreements that have been approved or that are pending approval in Kansas.<sup>2</sup> Those nine companies are listed below:

Capital Telecommunications, Inc.  
Fast Connections, Inc.  
Intermedia Communications, Inc. (ICI)  
Preferred Carrier Services, Inc.  
Sprint Communications Company (Sprint)  
Sterling International Funding d/b/a Reconex  
TIE Communications, Inc.  
US Long Distance, Inc. (USLD)  
Valu-Line of Kansas, Inc.

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<sup>2</sup> Affidavit of Sandra L. Wagner, February 5, 1997, ¶ 2.

10. Additionally, SWBT has interconnection agreements with two other companies that were omitted from the Wagner Affidavit: Brooks Fiber Communications of Missouri, Inc. (Brooks) and Comm South Companies, Inc.

11. Of these eleven interconnection agreements, seven are resale agreements which, as will be addressed below, do not provide a basis for facilities-based competition. To date, SWBT has reached four agreements with carriers that apparently intend to provide facilities-based competition: Brooks, ICI, Sprint, and USLD. These agreements do not satisfy all of the FTA's requirements. SWBT has not implemented the competitive checklist pursuant to these agreements, and none of these companies is yet providing competing facilities-based service to residential and business customers. (See Section VI of my Statement for a further discussion of these facts).

#### **IV. RESALE IS NOT FACILITIES-BASED COMPETITION**

12. Resale competition by definition does not meet the requirements of Section 271(c)(1)(A) of the FTA that facilities-based competition be offered by competing providers either exclusively or predominantly over their own telephone exchange service facilities. Although resale is one mechanism by which a new entrant may enter the local exchange market, it will not and cannot provide effective competition for an ILEC such as SWBT.

##### **A. Resale Is Limited in the Type of Service Offerings That Can Be Economically Resold in the Local Market.**

13. Resale has severe limitations as a means of offering effective local exchange competition. First, resale limits the new entrant to precisely the same service offerings as the incumbent. In fact, the new entrant cannot even economically offer a new package of features to the market. For example, SWBT has a combination of features in Kansas known as "The Works." This feature package comes with 10 features for residential customers and



11 features for business customers and is priced at \$15.95 in Kansas for both. If a new entrant wanted to offer a feature package with six features in Kansas, an offer currently not available with SWBT, the new entrant's cost would be the individual price for each of the six features.<sup>3</sup> The wholesale price, given Kansas' 21.6% discount,<sup>4</sup> would be \$11.96 for residential customers and \$16.07 for business customers. The wholesale price for six features for business customers would be higher than the retail price for "The Works." As a result, the new entrant would not be able to introduce a new combination of features to the local market under resale without suffering significant losses. Non-recurring costs associated with creation of the new entrant's own feature package only exacerbates this situation.

14. Competition is not served if the new entrant must wait for SWBT to offer this or any other feature package to its customers and then procure the avoided cost discount for the new package. The bottom line is that the new entrant under resale has no real opportunity to introduce new services or combinations of services that customers want. The ability to offer such new services, however, is surely at the very heart of the competition for local services envisioned in the FTA.

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<sup>3</sup> For the purposes of this exercise I selected the following six features: Call Waiting, Call Forwarding, Three Way Calling, Speed Calling (8 for residential customers and 30 for business customers), Call Return, and Call Blocking. The monthly retail price for these six features under SWBT pricing is \$15.25 for residential customers and \$20.50 for business customers. The wholesale price under resale for these six features is \$12.98 for residential customers and \$17.45 for business customers.

<sup>4</sup> The wholesale discount used for this illustration comes from the AT&T Arbitration Award in Kansas. *In the Matter of Petition by AT&T Communications of the Southwest, Inc. with Southwestern Bell Telephone Co. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 97-AT&T-290-ARB (March 10, 1997) (AT&T Arbitration Order). The SGAT offers a significantly worse discount of 14.9%.

**B. Resale Is Limited to Precisely the Same Calling Scopes as the Incumbent.**

15. Another major limitation for new entrants under resale is that the new entrant is limited to the call scope definitions of the incumbent. The incumbent will have defined Extended Area Service (EAS) plans that the new entrant can sell at retail less avoided cost. However, if the new entrant attempts to create its own calling scopes without purchasing the incumbent's currently available plan, the new entrant will have to pay intraLATA access charges for all originating and terminating minutes outside the incumbent's local calling scope. In Kansas, SWBT charges \$0.09652 for intraLATA access. If the new entrant signs up a large EAS user under the new entrant's own calling scope definition, the new entrant has volunteered to pay SWBT \$0.09652 for every intraLATA minute while SWBT's underlying cost is less than a penny.<sup>5</sup> This recipe for financial disaster will prevent any new entrant from introducing new calling scopes under resale. Again, the new entrant will be completely constrained to the market offers and pricing SWBT chooses to introduce.

16. These types of limitations on competition are widespread and, indeed, inherent in resale. And while it is clear that Congress intended for resale to be a market entry methodology for new entrants, it cannot be deemed full competition nor create the type of new services that were envisioned in the FTA.

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<sup>5</sup> An intraLATA call traversing the SWBT network, priced at SWBT's UNE prices, would use two Local Switching minutes (\$0.006), one Tandem Switching minute (\$0.0015), and two Common Transport minutes (\$0.001218), for a total cost per minute of \$0.008717.

**V. THE NEED FOR UNBUNDLED NETWORK ELEMENTS AS A MARKET ENTRY STRATEGY**

**A. Why UNEs are Important to Competition.**

17. The limitations outlined above and other limitations for resale are real and are not readily addressable under a resale entry strategy. It is for this reason that AT&T, or any other Local Service Provider (LSP) desiring to serve residential and small business customers without duplicating SWBT's network, must be able to utilize unbundled network elements, or UNEs, as its primary, initial local market entry strategy. AT&T is investing heavily today to enter local markets through resale, but the objective, indeed the business imperative, is to place these customers onto UNEs as quickly as is operationally and economically possible.

18. Specifically, AT&T has pursued access to the UNE Platform (Platform) that was authorized in the FTA.<sup>6</sup> The Platform would enable a new entrant to purchase the unbundled elements and, along with them, the "features, functions, and capabilities that are provided by means of such facility or equipment."<sup>7</sup> This would thereby enable the new entrant to purchase the unbundled element of local switching and along with it all of the features and capabilities contained within the local switch. This ability to purchase the unbundled element of local switching and along with it all of the features and capabilities contained within the local switch is critical because, in contrast to resale, it would enable the new entrant to introduce a new package of features contained within the switch and not be

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<sup>6</sup> FTA § 251(c)(3) states: "An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service." There are no limitations stated or implied that the unbundled network elements cannot be recombined in their entirety in such a way as to provide "such telecommunications service."

<sup>7</sup> FTA § 3(a)(45).

limited to the incumbent's pricing methodology or packages. This type of flexibility will make possible new offerings to customers and thus a start on the type of competition envisioned by the FTA.

19. Further, while the use of UNEs will not make AT&T and other long distance carriers predominantly facilities-based providers of local service,<sup>8</sup> the use of UNEs is a critical step in that process. By starting out using UNEs in combination with some of its own facilities, and then substituting more and more of its own facilities as time goes on--as long distance carriers will do as rapidly as possible for economic and competitive reasons -- AT&T and other carriers would likely evolve into predominantly facilities-based carriers. See Exhibit SET-1.

20. This will occur only if AT&T and other long distance carriers can access and economically purchase the Platform. Negotiations between AT&T and SWBT are continuing today on the methodology through which AT&T will access the UNE Platform. No doubt recognizing that use of the Platform will expose it to broader competition than services resale, SWBT has opposed the Platform consistently throughout negotiations with AT&T. (It is obviously in SWBT's best interest, from a competition point of view, to keep long distance carriers bottled up in resale where they will provide only the faintest whiff of competition).

21. As will be discussed later, the interconnection agreements SWBT has entered into as well as the SGAT also evidence SWBT's intent to eliminate the Platform as an option

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<sup>8</sup> Statement of Edwin Rutan, ¶¶ 31-32.

through the pricing of unbundled elements and SWBT's policies regarding the application of those prices.<sup>9</sup>

**B. How SWBT's Pricing of UNEs Is a Barrier to Competition**

22. The way in which SWBT is attempting to discourage use of the Platform is well illustrated by its pricing for UNEs. SWBT's price for the UNE Platform is a major barrier to the development of competition in Kansas.

23. The prices for the individual elements used in the illustrations which follow will be obtained (a) from the AT&T Arbitration Order with additional supplements, as needed, from the SGAT;<sup>10</sup> and (b) from the SGAT itself.

24. SWBT is openly discouraging use of the Platform by pricing all of its constituent elements at resale prices. Although this is not clear in the AT&T Arbitration Order, it is crystal clear in SWBT's SGAT. The SGAT specifically targets the Platform.

In Appendix UNE, SWBT writes:

When LSP recombines Unbundled Network Elements to create a service that SWBT offers at retail, the prices charged to LSP for the rebundled service will be computed as SWBT's retail price less the wholesale discount and offered under the same terms and conditions, including the application of access charges.<sup>11</sup>

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<sup>9</sup> Access to the Platform is also one of the few remaining disputed items between SWBT and Sprint Communications Company L.P. in their Interconnection Agreement. Interconnection Agreement-Kansas between Southwestern Bell Telephone Company and Sprint Communications Company L.P., Attachment UNE, at 2.

<sup>10</sup> A full set of prices did not exist in the arbitration award; therefore, I supplemented it with the SGAT prices. As explained in the Statement of Edwin Rutan, however, Track A interconnection agreements and Track B SGATs are separate and distinct, making Track B a conditional alternative to Track A only, not a supplement.

<sup>11</sup> SGAT, Appendix UNE ¶ 13.5.

This single statement would prevent a new entrant from having any opportunity to create the innovative service offers at the competitive prices that should be available with local switch unbundling. It is anticompetitive and entirely antithetical to the development of facilities-based competition.

25. As I showed earlier, Congress intended for LSPs to be able to combine UNEs together to offer telecommunications services.<sup>12</sup> Also, Congress required that the price for UNEs be "based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element."<sup>13</sup> Pricing UNEs at retail less avoided cost (i.e. wholesale) is not the forward-looking, TELRIC pricing required by the FTA for UNEs, and therefore is in conflict with the FTA. In addition, the FCC recognized and ruled that UNEs could be recombined in full without restriction:

We conclude, therefore, that Congress did not intend section 251(c)(3) to be read to contain any requirement that carriers must own or control some of their own local exchange facilities before they can purchase and use unbundled elements to provide a telecommunications service.<sup>14</sup>

26. Further, the FCC plainly understands that enabling LSPs to fully rebundle the UNEs would allow the LSPs to introduce new services, develop new packages of services, and price the services independently of the ILEC, all of which benefit consumers:

In contrast a carrier offering services solely by recombining unbundled elements can offer services that differ from those offered by an incumbent. For example some incumbent LECs have capabilities within their networks, such as the ability to offer Centrex, which they do not use to offer services to consumers. Carriers purchasing access to unbundled elements

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<sup>12</sup> FTA § 251(c)(3).

<sup>13</sup> FTA § 252(d)(1)(A)(I)

<sup>14</sup> First Report and Order ¶ 328.

can offer such services. Additionally, carriers using unbundled elements can bundle services that incumbent LECs sell as distinct tariff offerings, as well as services that incumbent LECs have the capability to offer, but do not, and can market them as a bundle with a single price. The ability to package and market services in ways that differ from the incumbent's existing service offerings increases the requesting carrier's ability to compete against the incumbent and is likely to benefit consumers. Additionally, carriers solely using unbundled network elements can offer exchange access services. These services, however, are not available for resale under section 251(c)(4) of the 1996 Act.<sup>15</sup>

27. It could not be more plain that Congress and the FCC both intended for LSPs to be allowed to rebundle UNEs to offer unique combinations of services in local markets. This capability, as I have pointed out, is critical to generating local competition. But SWBT has used its pricing of UNEs to create a nearly insurmountable barrier to such competition in every facility-based interconnection agreement signed within the state of Kansas and also in its SGAT.

28. SWBT's pricing of the UNE Platform at resale prices is only one of SWBT's anti-UNE pricing ploys in its interconnection agreements and in its SGAT. The following discussion will assume that the Platform will be priced as a combination of UNE elements to explore how this pricing will inhibit the introduction of competition.

**1. A profile customer definition is required to establish the UNE Platform price.**

29. One of the difficulties in understanding how the pricing of UNEs affects the economic feasibility of using the Platform as a viable market entry strategy is determining what SWBT would charge for the Platform. The following paragraphs will lay out, for illustrative purposes, a reasonable view of the costs involved in purchasing the Platform

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<sup>15</sup> FCC First Report and Order ¶ 333.

under the AT&T Arbitration Award with supplements, as needed, from the SGAT, and also under the SGAT itself. This view is based on the understanding I have gained through discussions with SWBT up to this point. Please understand, though, that SWBT is extraordinarily reluctant to make this option available to new entrants and these discussions are ongoing.

30. To develop the price of the Platform, I created a Local Usage Profile and a Toll Usage Profile for a representative residential or business customer. The profile was created so as to capture the usage characteristics of these representative customers and how those usage characteristics would "trigger" different UNE rate elements.<sup>16</sup> The tables below describe the usage characteristics of a profile customer.

#### Local Usage Profile

Local Usage (Originating and Terminating)	1400 MOU
Terminating to Originating Ratio	1
Average Call Holding Time	3.5 MOU
Intrastwitch Traffic Flow	40%
Interswitch Traffic Flow	60%
Direct Trunked Traffic Flow	30% (50% of Interswitch Traffic Flow)
Tandem Trunked Traffic Flow	30% (50% of Interswitch Traffic Flow)
Local CNAM Queries (per Month)	10
Directory Assistance	
Total Calls	5
Calls from Above with Call Completion	2
Local CLASS Features	3

<sup>16</sup> The profiles were not intended to capture precisely every usage parameter of a residential or business customer. Instead, these profiles the primary characteristics that "trigger" UNE rate elements and the consequent cost of the platform for CLECs.



### Toll Usage Profile

InterLATA MOU (Originating and Terminating)	80 MOU
InterLATA Interstate Usage	50%
IntraLATA MOU (Originating and Terminating)	40 MOU
Terminating to Originating Ratio	1
Average Call Holding Time	3.5 MOU
InterLATA Trunking	
Direct Trunking to IXC	75%
Tandem Trunking to IXC	25%
IntraLATA Trunking	
Direct Trunking	0%
Tandem Trunking	100%
Database Queries	
Simple 800	10
Complex 800	10
LIDB	10

2. The usage characteristics enable the LSP to identify which UNE rate elements to select and develop the recurring and non-recurring costs for customers.

31. For purposes of discussion, the usage characteristics outlined above identify which UNEs are required to service these customers. Additionally, the usage characteristics will dictate the volume of usage sensitive elements (i.e. tandem switching, common transport) that must be purchased. The following tables were generated by taking the usage characteristics set forth above and applying the appropriate rate elements to develop the monthly recurring cost for the profile business and residential customers and the one-time non-recurring costs (NRCs) under the Platform. Additionally, the zone that was selected for these prices was Zone 3. This is the urban zone and the area where competition will most likely first develop. This is also the zone that provides the lowest cost view of SWBT's pricing policy in Kansas.